evil, if such, is in its very nature a wrong by the employee against the employer * * *" and that in this there was sufficient ground for classification. Other decisions on anti-tipping statutes are noted in 17 MICH. LAW REV. 96.

CRIMINAL LAW—MOTION IN ARREST—INDICTMENT—NAMES OF PARTIES.—Defendant, Goldberg, was indicted in fifty counts for the illegal sale of liquor. In forty-nine of the counts his name was spelled correctly, in one of them it was spelled Holdberg. He was convicted on all fifty counts, and moved in arrest of judgment. The motion was denied in the trial court. *Held,* reversed and remanded, the names not being *idem sonans,* the holding must be reversed *in toto. People* v. *Goldberg* (Ill., 1919), 122 N. E. 530.

The decision is one of those which grate on the legal conscience as well as add to the layman's arguments against the technicalities of legal procedure. To arrive at it the court took three steps. First: that Holdberg and Goldberg are not *idem sonans.* This is equivalent to saying that the attentive ear would have no difficulty in distinguishing between them when pronounced. *Maier* v. *Brock,* 222 Mo. 74. Second: that the objection was correctly raised by a motion in arrest of judgment. Other courts hold that this is too late to raise such an objection. See *Verberg* v. *State,* 137 Ala. 73, that a plea of not guilty is a waiver of the fact that the name is a misnomer; and *Commonwealth* v. *Dedham,* 16 Mass. 141, that misnomer is only matter of abatement, and not of arrest of judgment. Third: that the decision must be reversed *in toto.* The court goes on the authority of *People* v. *Gaul,* 233 Ill. 630. The United States Supreme Court seems to differ, holding that where there is error in one count the verdict may still stand as to the rest. *Ballew* v. *United States,* 160 U. S. 187.

CRIMINAL LAW—NEGLIGENT ASSAULT AND BATTERY WITH AN AUTOMOBILE.—Defendant was convicted of assault and battery. There was evidence tending to prove that he was driving an automobile in a closely built-up portion of a city at a speed of about thirty-five miles an hour and that, at a street crossing which he knew to be dangerous, he struck and injured the prosecutor who was riding a motorcycle. *Held,* the evidence was sufficient to support the conviction: affirmed on rehearing. *Bleiweiss* v. *State* (Sup. Ct. of Ind., 1918, 1919), 119 N. E. 375; 122 N. E. 577.

The court quotes *Luther* v. *State,* 177 Ind. 619, as follows: "Intent, on the part of the person charged, to apply the force constituting the battery, is an essential element of the offense. But the intent may be inferred from circumstances wihch legitimately permit it. It may be from intentional acts * * * done under circumstances showing a reckless disregard for the safety of others, and a willingness to inflict the injury." The case thus rests on the same theory as *State* v. *Schutte,* 87 N. J. L. 15 (Supreme Court), 88 Ib. 396 (Court of Errors), which was discussed at some length in 13 MICH. L. REV. 594. It seems obvious that, under the beneficent fiction of implied intent, we are developing a doctrine of negligent assault and battery, limited perhaps to the grosser degrees of negligence (as negligent homicide often is), and possibly excluding cases where there is no act save one of omission.

In the first opinion in the principal case, the court seems to rest in part on the doctrine of constructive intent, as applied to the violation of the speed law. The inappropriateness of this doctrine is made clear by *Commonwealth* v. *Adams,* 114 Mass. 323 (cited with approval in 177 Ind. 619, 629), and by the opinion of the Court of Errors in the case of *State* v. *Schutte, supra.* See also 17 MICH. L. REV. 603.

DAMAGES — TIPS INCLUDED IN ESTIMATING DAMAGES OF AN EMPLOYEE WRONGFULLY DISMISSED.—The plaintiff was employed as a hair dresser by the defendant, and in the ordinary course of his service he received tips from the persons whom he attended. The defendant wrongfully dismissed him. *Held,* that the plaintiff was entitled to include the loss of tips in the damages claimed as a result of the wrongful dismissal. *Manubens* v. *Leon* [1919], 1 K. B. 208.

The case involves a somewhat unique application of a familiar principle. The damages recoverable on a breach of contract are said to include such as may reasonably be considered as arising naturally from the breach of the contract itself or such as may reasonably be supposed to have entered into the contemplation of the parties when they made the contract. *Hadley* v. *Baxendale* (1854), 9 Exch. 341. The application of this general principle to cases involving loss of tips seems to be an open question on authority. There are a few analogies. It has been held, for example, that where the practice of tipping is open, notorious, and sanctioned by the employer, such gratuities may be included in estimating the "average weekly earnings" in respect of which compensation is awarded under the English Workmen's Compensation Act of 1906. *Penn* v. *Spiers & Bond* [1908], 1 K. B. 766; *Great Western Railway Co.* v. *Helps* [1918], A. C. 141. It has also been held that an employee who turns over the tips received to his employer, under a mistake as to his rights, may compel the employer to make restitution. *Zappas* v. *Roumeliote* (1912), 156 Ia. 709; *Polites* v. *Barlin* (1912), 149 Ky. 376. So long as an indulgent public is willing to tolerate the tipping system, it would seem on principle that the law ought to take account of this kind of remuneration in estimating the damages to be awarded for breach of a service contract.

FIRES—TRACTOR ON HIGHWAY — DANGEROUS AGENCY — DOCTRINE OF RYLANDS V. FLETCHER.—A steam engine (presumptively of the nature of a steam tractor) was being driven by defendant along a highway and sparks emitted from the engine set fire to plaintiff's premises. The engine was equipped with a special apparatus to prevent the emission of sparks. *Held,* that since defendant was using a "dangerous fire-producing engine," the doctrine of *Rylands* v. *Fletcher,* L. R. 3 H. L. 330, and *Gunter* v. *James,* 24 Times L. R. 868, was applicable; hence defendant was liable in damages for the injury caused, although he was in no way negligent. *Mansel* v. *Webb* (1918), 88 L. J. K. B. 323.

The principal case is significant in that the English courts have no compunction about confirming the extension of the application of a doctrine